

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through IX, the amendment of	)	PROPOSED ADOPTION,
ARM 37.100.101, 37.100.102,	)	AMENDMENT, AND REPEAL
37.100.120, 37.100.121, 37.100.125,	)	
37.100.130, 37.100.135, 37.100.140,	)	
37.100.141, 37.100.145, 37.100.146,	)	
37.100.150, 37.100.151, 37.100.152,	)	
37.100.153, 37.100.157, 37.100.161,	)	
37.100.162, 37.100.165, 37.100.170,	)	
and 37.100.175, and the repeal of	)	
ARM 37.100.105 and 37.100.110,	)	
pertaining to adult foster care homes	)	
(AFCH)	)	

TO: All Concerned Persons

1. On February 5, 2014, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on January 29, 2014, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

3. The rules as proposed to be adopted provide as follows:

NEW RULE I ADULT FOSTER CARE HOMES (AFCH): LIMITATIONS ON CARE PROVIDED (1) Except as provided in this rule and pursuant to 50-5-216, MCA, the types of care offered by Adult Foster Care Homes (AFCH) are limited to light personal care, custodial care, and supervision. An adult in the care of an AFCH must not be:

- (a) in need of skilled nursing care;
- (b) in need of medical, physical, or chemical restraint;
- (c) nonambulatory or bedridden;
- (d) incontinent to the extent that bowel or bladder control is absent; or

- (e) unable to self-administer medications.
- (2) To continue the continuity of care, an AFCH may be licensed to provide care for an adult receiving state-funded services through the developmental disabilities program of the department or an adult who resided in the home before reaching 18 years of age, even though the adult is:
  - (a) in need of skilled nursing care;
  - (b) in need of medical, physical, or chemical restraint;
  - (c) nonambulatory or bedridden;
  - (d) incontinent to the extent that bowel or bladder control is absent; or
  - (e) unable to self-administer medications.
- (3) A resident of an AFCH licensed under (2) must have a certification in the form of a signed statement, renewed on an annual basis, from a physician, a physician's assistant-certified, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the home and who has actually visited the home within the year covered by the statement and certifies that:
  - (a) the services available to the resident in the home or in the community, or services that may be brought into the home from the community, including nursing services or therapies, are appropriate for meeting the health care or other needs of the resident; and
  - (b) the health care status of the resident does not necessitate placing the resident in a more intensive residential service setting.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-101, 50-5-103, 50-5-215, 50-5-216, MCA

**NEW RULE II ADULT FOSTER CARE HOMES (AFCH): RESIDENT RIGHTS** (1) The facility must comply with the Montana Long-Term Care Residents' Bill of Rights, found at 50-5-1101 through 50-5-1107, MCA. This includes the posting of the facility's statement of resident rights in a conspicuous place. Prior to or upon admission of a resident, the AFCH must explain and provide the resident with a copy of the Montana Long-Term Care Residents' Bill of Rights.

(2) The provider will write and adhere to a statement applicable to all residents in the AFCH, including as a minimum the rights listed in 50-5-1104, MCA. This statement will be provided to each resident and his or her legal representative upon admission to the AFCH. Signed copies must be retained in the resident file and copies made available to the resident and resident's legal representative, if applicable.

(3) This written statement must include information that all residents have the right to:

- (a) be treated as an adult with respect and dignity;
- (b) be informed of their medical condition and the right to consent to or refuse treatment;
- (c) receive appropriate care, services, and prompt medical care, as needed;
- (d) participate in community organizations and activities;
- (e) have medical and personal information kept confidential;
- (f) a safe and secure environment;

(g) be free from discrimination in regards to race, color, national origin, sex, or religion;

(h) be provided the opportunity to voluntarily practice their own religion, attend religious services of their choice in the community, and to visit with representatives of their faith;

(i) identify with their cultural heritage;

(j) the opportunity for bathing and personal grooming, as desired;

(k) dress according to personal taste;

(l) write and send mail at their own expense without censorship and receive unopened mail;

(m) daily private access to a telephone;

(n) have visitors within reasonable visiting hours; and

(o) be encouraged and assisted to exercise constitutional and legal rights including the right to vote.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-215, MCA

NEW RULE III ADULT FOSTER CARE HOMES (AFCH): LICENSE RESTRICTIONS (1) A license is not subject to sale, assignment, or other transfer, voluntary or involuntary.

(2) A license is valid only for the premises and person covered under [NEW RULE I], for which the original license was issued.

(3) The license remains the property of the department and should be returned to the department upon closing or transfer of ownership.

(4) The address for returning the license is Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-201, 50-5-215, 50-5-216, MCA

NEW RULE IV ADULT FOSTER CARE HOMES (AFCH): COMMUNICABLE DISEASE CONTROL (1) The AFCH must develop and implement an infection prevention and control program. At a minimum:

(a) The provider will develop, implement, and review, at least annually, written policies and procedures regarding infection prevention and control which must include, but not be limited to, procedures to identify high-risk individuals and what methods are used to protect, contain, or minimize the risk to residents, staff, and visitors.

(b) The provider is responsible for the direction, provision, and quality of infection prevention and control services.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-215, MCA

NEW RULE V ADULT FOSTER CARE HOMES (AFCH): PETS (1) When pets are kept on the premises, the provider must write and adhere to procedures for their care and maintenance. The AFCH will consult with the local health department and care for all pets as recommended by them.

(2) When animals are kept at the AFCH, the following conditions must be met:

- (a) proof of current vaccinations must be kept on file at the AFCH;
- (b) pets not confined in enclosures must be under control;
- (c) pets must not present a danger to residents, staff, or visitors;
- (d) live animals and fowl are prohibited from food preparation, food storage, and eating areas; and
- (e) caregivers and residents must wash their hands after handling animals, animal food, and animal waste.

(3) The AFCH will not keep or bring in ferrets, turtles, iguanas, lizards, or other reptiles, psittacine birds (birds of the parrot family), or any wild or dangerous animals.

(4) The AFCH may allow exceptions for reptiles if the animals are kept behind a glass wall in a tank or container where the animal cannot be easily touched while inside the tank.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-215, MCA

NEW RULE VI ADULT FOSTER CARE HOMES (AFCH): BACKGROUND CHECKS (1) The provider, staff, and any adult residing in the home must have a State of Montana criminal background check, and, if applicable, a tribal criminal background check and state protective service background check prior to receiving an AFCH license or working at the AFCH.

(2) If an applicant has lived outside the state within the past five years, the AFCH provider must complete background checks in every state that the applicant has resided within the past five years.

(3) The department will deny or revoke a license upon finding that:

(a) the provider, staff member, or anyone residing in the AFCH has been convicted by a court of competent jurisdiction of a felony or misdemeanor involving homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor, assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, prostitution, robbery, or burglary;

(b) the provider, staff member, or anyone residing in the home has a conviction for a crime pertaining to children and families, including but not limited to child abuse or neglect, incest, child sexual abuse, ritual abuse of a minor, felony partner and family member assault, child pornography, child prostitution, Internet crimes involving children, felony endangering the welfare of a minor, felony unlawful transactions with children, or aggravated interference with parent-child contact;

(c) the provider or staff member or anyone residing in the home has, within the previous five years, a felony conviction of a drug-related offense, including but not limited to use, distribution or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal manufacture of dangerous

drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture of or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs;

(d) the provider, staff member, or anyone residing in the home has been named as a perpetrator in a substantiated report of child abuse or neglect; or

(e) the provider, staff member, or anyone residing in the home has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.

(4) The department may deny or revoke a license upon finding that the provider, staff member, or anyone residing in the home has a conviction for a misdemeanor partner and family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with a child, or a crime involving an abuse of the public trust.

(5) The provider or staff member or anyone residing in the home who is charged with physical or sexual violence against any person, or any felony drug-related offense and awaiting trial may not provide care or be present in the facility pending the outcome of the criminal proceeding.

(6) The AFCH is responsible for assuring that the persons covered by this rule have met these requirements before providing care.

(7) The provider, staff member, or anyone residing in the home must not pose any potential threat to the health, safety, and well-being of the residents in care.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-215, MCA

NEW RULE VII ADULT FOSTER CARE HOMES (AFCH): ADDITIONAL REQUIREMENTS FOR AN AFCH LICENSED TO SERVE INDIVIDUALS WITH MENTAL ILLNESS

(1) An AFCH licensed to serve individuals with mental illness must admit only those residents that meet the following admission criteria:

(a) be diagnosed with a severe disabling mental illness as defined in ARM 37.86.3503;

(b) be medically stable;

(c) must not be an immediate danger to themselves or others; and

(d) be able to take medications when prompted.

(2) Documentation of the resident meeting admission criteria in (1) must be in the resident's file.

(3) The AFCH must contract with a licensed mental health center that has an adult foster care endorsement pursuant to ARM 37.106.1906 or have a formal working relationship with a case management team providing mental health services to the resident.

(4) The AFCH provider contracting with a mental health center must participate in residents' treatment planning as required in ARM 37.106.2016.

(5) In addition to requirements in ARM 37.100.162, a placement agreement must set forth the terms of the resident's placement, the responsibilities of the foster care provider, the responsibilities of the mental health center or case management

team, the responsibilities of the resident, and when appropriate, the responsibilities of the resident's legal guardian.

(6) The AFCH provider contracting with a mental health center must participate in orientation as required in ARM 37.106.2004.

(7) The AFCH will assign chores to residents only as outlined in the resident's treatment plan.

(8) AFCH providers must have a written policy describing the consequences to the resident when violating any rules which the AFCH itself establishes.

(9) If the house rules are violated by the resident the AFCH will submit an incident report to the mental health center or case management team within 24 hours.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-215, MCA

NEW RULE VIII ADULT FOSTER CARE HOMES (AFCH): APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of this subchapter, the terms of this subchapter apply to an AFCH.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-215, MCA

NEW RULE IX DISCHARGE CRITERIA (1) The provider will not discharge or transfer a resident from the AFCH without prior planning, including:

(a) providing a written 30-day prior notice to the resident or resident's legal representative; and

(b) maintaining a record that includes:

(i) the date of discharge;

(ii) the reason for discharge;

(iii) the disposition of money, valuables, and medications held for safekeeping; and

(iv) a forwarding address of the resident or the resident's legal representative.

(2) A resident may be involuntarily discharged in less than 30 days for the following reasons:

(a) the resident has a medical emergency;

(b) the resident exhibits behavior that poses an immediate danger to self or others; or

(c) the resident has not resided in the facility for 30 days.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-215, MCA

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.100.101 ADULT FOSTER CARE HOMES; (AFCH): PURPOSE (1) The purpose of these rules in this subchapter is to establish licensing requirements for adult foster family care homes (AFCH).

(2) The purpose of an ~~adult foster family care home~~ AFCH is to offer in a home-like safe environment, light personal care, custodial care, and supervision to aged or disabled adults who require assistance in meeting their basic needs. Residents' needs are to be addressed in a manner that supports and enables residents to maximize their ability to function at the highest level of independence possible.

(3) An ~~adult foster family care home~~ AFCH is limited to light personal care, custodial care, and supervision and does not provide skilled nursing care except as provided for in [NEW RULE I].

(4) The licensing requirements for operating an ~~adult foster home~~ AFCH do not apply to persons in a mutual or shared living arrangement.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-101, 50-5-103, 50-5-215, 50-5-216, 53-5-303, MCA

37.100.102 ADULT FOSTER CARE HOMES; (AFCH): DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment, or the misappropriation of personal property of any person receiving care in an AFCH.

~~(4) (2) "Adult foster family care home AFCH" means a private home operated by one or more persons 18 years of age or older which or other facility that offers, except as provided in 50-5-216, MCA and [NEW RULE I], only light personal care, custodial care, and supervision to four or fewer disabled adults, or aged persons who are not related to the operator owner or manager of the home by blood, or marriage, or which offers light personal care or custodial care to aged persons adoption, or who are not under full guardianship of the owner or manager. (An adult foster family care home shall hereafter be referred to as an adult foster home.)~~

(2) remains the same, but is renumbered (3).

(4) "Applicant" means a person who is applying for an AFCH license.

(5) "Case plan" means a document created by the resident's case manager, or a representative from a placement agency which identifies supports and services that are necessary for the resident to achieve independence, dignity, and personal fulfillment while in the AFCH.

(5) remains the same, but is renumbered (6).

(4) remains the same, but is renumbered (7).

~~(3) (8) "Disabled adult" means a person 18 years of age or older who has been determined to be disabled by the social security administration, the veteran's administration (full disability), the department of public health and human services for the purposes of Medicaid eligibility or a court of competent jurisdiction as defined by ARM 37.100.302, 37.100.402, and 37.86.3503.~~

(9) "Exploitation" means an act taken by a person who has the trust of an AFCH resident to obtain control of or to divert to the advantage of another, the ownership, use, benefit, or possession of the resident's money, assets, or property

by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of depriving the AFCH resident of the ownership, use, benefit, or possession of his or her money, assets, or property.

(10) "Incident report" means a written report documenting an unusual occurrence, accident, or illness involving a resident.

(11) "License" means the document issued by the department that authorizes a person to operate an AFCH.

(6) remains the same, but is renumbered (12).

(i) remains the same, but is renumbered (a).

(ii) (b) "Supervision" means guidance of a person as he carries out activities of daily living, including reminding a resident to maintain his medication schedule as directed by his physician practitioner, reminding him of important activities to be carried out, assisting him in keeping appointments, and being aware of his general whereabouts even though he may travel independently about the community.

(8) remains the same, but is renumbered (13).

(14) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving care in an AFCH, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect. The term includes, but is not limited to:

(a) deprivation of food, shelter, appropriate clothing, medical care, or other services;

(b) failure to follow a prescribed care plan or medical treatment; or

(c) failure to respond to a resident in an emergency situation by indifference, carelessness, or intention.

(15) "Practitioner" means an individual licensed by the Department of Labor and Industry who has assessment, admission, and prescription authority.

(16) "PRN medication" means an administration scheme, in which a medication is not routine, is taken as needed, and requires the licensed practitioner or individual resident's cognitive assessment and judgment for need and effectiveness.

(17) "Provider" means a person who operates or is licensed to operate an AFCH. The provider may be involved in the direct care of residents in the AFCH.

(18) "Resident" means anyone accepted for care in an AFCH.

(19) "Resident agreement" means a signed, dated, written document drawn up between the resident, the resident's legal representative or caseworker, and the provider. The resident agreement lists all charges, services, refunds, and discharge criteria.

(20) "Resident's legal representative" or "resident's representative" means the resident's guardian, or, if no guardian has been appointed, then the resident's family member or other appropriate person acting on the resident's behalf.

(7) (21) "Responsible person" means a relative or friend of the resident or an advocate the resident, resident's legal representative, or any other person identified by the department or the placing agency in the placement resident or resident's legal representative, as specified in the resident's agreement.

(22) "Restraint" means a personal restriction that immobilizes or reduces the freedom of movement of an individual's arms, legs, or head.

(23) "Serious incident" means:



- (a) a suicide attempt;
- (b) use of excessive physical force by the provider or staff;
- (c) physical or sexual assault of a resident by another resident, provider, or staff;
- (d) injury to a resident which requires emergency medical care;
- (e) falls or accidents that injure a resident;
- (f) known or suspected abuse or neglect of a resident by the provider or staff;
- (g) unusual behavioral episodes; or
- (h) the death of a resident.
- (9) (24) "Skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under orders of an attending physician the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.
- (25) "Staff" means any person whether paid or unpaid, other than the provider, who is employed by the provider and is providing care to residents in an AFCH.
- (26) "Survey" means a detailed study to determine if applicant or provider meets all applicable licensing requirements.
- (27) "Third party services" means care and services provided to a resident by individuals or entities who have no fiduciary interest in the facility.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-101, 50-5-103, 50-5-215, 50-5-216, 53-5-303, MCA

37.100.120 ADULT FOSTER CARE HOMES; (AFCH): LICENSE REQUIRED (1) Every ~~adult foster home~~ AFCH must be licensed by the department.

(2) Any person, group, or corporation that establishes or operates an ~~adult foster care home~~ AFCH without a license from the department is in violation of law and subject to prosecution.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-111, 50-5-112, 50-5-113, 50-5-201, 50-5-215, 53-5-303, MCA

37.100.121 ADULT FOSTER CARE HOMES; (AFCH): LICENSES (1) The department ~~shall~~ may issue a license for a period of one to three years in duration for an ~~adult foster home~~ AFCH, under ARM 37.100.121, to any license applicant meeting all of the requirements established by these rules ~~in this subchapter~~ and the governing statutes.

(2) The department ~~shall~~ will determine whether an applicant meets the requirements after conducting a licensing ~~study~~ survey.

(3) The department ~~shall~~ will renew the license on the expiration date of the current license if:

(a) the ~~licensee~~ provider makes written application for ~~issuance~~ renewal at least 30 days prior to the expiration date of the current license; and

(b) the licensee provider continues to meet all requirements established by these rules in this subchapter, as determined by the department after a licensing study survey.

(4) An ~~adult foster home~~ AFCH may be licensed to care for four or fewer aged persons or disabled adults in need of such care, and ~~shall~~ must not care for more residents than the number allowed by their license.

AUTH: 50-5-103, 50-5-215, ~~53-5-304~~, MCA

IMP: 50-5-103, 50-5-204, ~~50-5-210~~, 50-5-215, ~~53-5-303~~, MCA

37.100.125 ADULT FOSTER CARE HOMES; (AFCH): LICENSING PROCEDURES (1) An applicant ~~shall~~ must apply for an ~~adult foster home~~ AFCH license prior to the operation of such home or prior to the expiration of a current license. ~~Application shall be made to the department upon forms provided by the department.~~

(2) Application for a license upon forms provided by the department and accompanied by the required fee must be made to the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59602-2953.

~~(2) (3)~~ Upon receipt of an application for license or renewal of license, the department ~~shall~~ will conduct a ~~study and evaluation of the home and applicant within 30 days~~ licensing survey to determine if the home and applicant ~~comply with the meet all~~ licensing requirements for licensure as established by these rules. Within ~~60~~ 45 days of receipt of a complete application the department ~~shall~~ will make a final determination of whether the home will be licensed.

~~(3) (4)~~ If the department determines that an application or accompanying information is incomplete or erroneous, the department will notify the applicant of the specific deficiencies or errors and ~~the applicant shall submit the required or corrected information within 60 days~~. The department ~~shall~~ will not issue a license until it receives all required information.

(5) Upon completion of the licensing survey, the department will notify the applicant or provider, in writing, whether they have met the licensing requirements. If the facility has any deficiencies that need to be corrected, the applicant or provider must submit an acceptable plan of correction within ten business days.

~~(4) (6)~~ Each applicant or provider must report to the department any changes which would affect the current accuracy of information provided on the application within 48 hours prior to the effective date of the change.

~~(5) (7)~~ ~~After denial of~~ If an initial application is denied, an applicant who does not meet the standards set forth in these rules can reapply when those standards are ~~complied with~~ met. ~~The department will respond within 30 days of the new application.~~

(8) A provider must report a change of address to the department at least three weeks prior to moving. The department will then evaluate whether the new residence meets the licensing requirements before the provider may operate an AFCH in the new residence.

AUTH: 50-5-103, 50-5-215, ~~53-5-304~~, MCA

IMP: 50-5-103, 50-5-203, 50-5-215, ~~53-5-303~~, ~~53-5-312~~, MCA

37.100.130 ADULT FOSTER CARE HOMES, (AFCH): LICENSE REVOCATION, DENIAL, REVOCATION, OR SUSPENSION (1) The department may deny, revoke, or suspend an adult foster home AFCH license by written notification to the licensee specifying the reasons for denial, revocation or suspension within 30 days of the department's determination that provider for any of the following reasons:

(a) the ~~home~~ provider is not in compliance with licensing requirements established by this subchapter; or

(b) the licensee provider has made misrepresentations to the department, either negligent or intentional; or

(c) the licensee provider, staff, or other persons at in the home have been named as a perpetrator in a substantiated report of abuse, neglect, or exploitation of an ~~aged person or disabled adult~~ a child or adult;

(d) the licensee provider, staff, or other persons in the home pose a risk or threat to the safety or welfare of any resident of the home;:

(e) any AFCH resident requires physical restraint;

(f) any AFCH resident will need to be carried from the home during any emergency that requires evacuation unless under the direct care of a hospice provider; or

(g) any AFCH resident is totally incontinent or is incontinent and unable to manage their incontinence with more than minimal supervision.

(2) The department must deny a license if:

(a) any adult foster care resident of the home requires physical restraint.

(b) any adult foster care resident of the home will need to be carried from the home during any emergency that requires evacuation.

(c) any adult foster care resident of the home is totally incontinent or is incontinent and unable to manage their incontinence with more than minimal supervision.

(3) (2) If any violation of these rules the licensing requirements by a licensee provider, staff, or person in the home places a resident in imminent risk of injury or harm, the license may be immediately revoked.

(4) (3) If the department finds that a current licensee provider who is operating an adult foster care home AFCH is out of compliance with the standards set forth in these rules, the department will not revoke or deny renewal of the license if all the following conditions are met:

(a) and (b) remain the same.

(c) the licensee provider submits a written ~~correction~~ corrective action plan within ~~45~~ ten days of the department's notification of noncompliance specifying how compliance will be made within 30 days of receipt of the notification of noncompliance; and

(d) the department approves the ~~correction~~ corrective action plan.

AUTH: 50-5-103, 50-5-215, ~~53-5-304~~, MCA

IMP: 50-5-103, 50-5-207, 50-5-215, ~~53-5-303~~, MCA

37.100.135 ADULT FOSTER CARE HOMES; (AFCH): FAIR HEARING

(1) remains the same.

(2) ~~The licensee shall~~ provider will cease operation of the ~~foster home~~ AFCH pending the fair hearing in those instances where the revocation or suspension of the license is based upon actions that the department has determined places a any resident in imminent risk of harm or injury.

AUTH: 2-4-201, 50-1-202, 50-5-103, 50-5-215, ~~52-3-304~~, ~~53-5-304~~, MCA

IMP: 50-5-103, 50-5-208, 50-5-215, ~~50-5-227~~, ~~52-3-303~~, ~~53-5-303~~, MCA

37.100.140 ADULT FOSTER CARE HOMES; (AFCH): ENVIRONMENTAL REQUIREMENTS (1) ~~The home shall~~ AFCH must be located close to community resources.

(a) ~~The home shall~~ AFCH must be accessible to transportation -- (e.g., bus, train, or car).

(b) ~~The home shall~~ AFCH must be in reasonable proximity to shopping areas, churches, senior centers, medical and dental clinics, and hospitals.

(2) ~~The home shall~~ AFCH must have an adequate and safe ~~sewage system~~ and water supply. A public water supply must be used, if available.

(a) If a nonmunicipal water source is used, coliform sampling must be done before licensing and, at least, two separate times per year. The sampling schedule must include collection in the two time periods that the water source is most likely to be contaminated, such as in April through June and September through October or as directed by the local health authority.

(b) The water samples must be tested for coliform bacteria and action taken to ensure potability.

(c) Water test records must be retained for three years.

(d) Nonpotable water sources must be marked "not for human consumption."

(e) Bottled and packaged potable water must be obtained from a licensed and approved source and must be handled and stored in a way that protects it from contamination.

(3) The AFCH must be connected to a public sewer system, if available. If septic tanks or other nonmunicipal sewage systems are used, they must be in good working order.

(a) The AFCH must repair or replace the sewage system whenever:

(i) it fails to accept sewage at the rate of application;

(ii) seepage of effluent from or ponding of effluent on or around the system occurs;

(iii) contamination of a potable water supply or state waters is traced to the system; or

(iv) a mechanical failure occurs.

(4) Mop water or soiled cleaning water must be disposed of immediately after use in a utility sink or a toilet.

~~(3)~~ (5) ~~The foster home~~ AFCH must be equipped with a telephone landline. Telephone numbers of the hospital, police department, fire department, ambulance, and poison control center must be posted by each telephone. The provider must

notify the department, the residents' case managers, and the residents' legal representative within 24 hours any time the AFCH phone number is changed.

~~(4)~~ (6) The licensee shall provider must keep the home clean and in good repair and the premises shall must be kept free from objects, materials, and conditions which constitute a danger to the residents.

(7) All operable windows that may be left open must be fitted with insect screens.

(8) A minimum of ten foot-candles of light must be available in all rooms and hallways, with the following exceptions:

(a) all reading lamps must have a capacity to provide a minimum of 30 foot-candles of light;

(b) all toilet and bathing areas must be provided with a minimum of 30 foot-candles of light;

(c) general lighting in food preparation areas must be a minimum of 50 foot-candles of light; and

(d) hallways must be illuminated at all times by at least a minimum of five foot-candles of light at the floor.

~~(5)~~ (9) The foster home shall AFCH must make adequate provisions for laundering of residents' personal laundry.

(a) A mechanical washer and a hot air dryer must be available.

(b) Soiled linens and clothing must be stored in closed containers prior to laundering in an area that is separate from food, storage, kitchen, and dining areas.

(c) Sheets and pillowcases must be laundered at least weekly, and more often, if soiled.

(d) All bed linens, towels, and washcloths must be dried in the dryer.

(e) Clean laundry must be protected from contamination from soiled laundry.

(f) Anyone who handles soiled laundry must wash their hands before handling clean laundry.

~~(6)~~ (10) The licensee shall facility must be equipped to provide an adequate amount of hot water for a resident's use between the temperature range of 110° through 120° F at the fixture.

~~(7)~~ (11) Bedrooms. There shall must be no more than ~~3 persons~~ three residents in any bedroom and each room shall must include:

(a) and (b) remain the same.

(c) exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, each resident's bedroom shall must have 80 square feet per each bed placed in that bedroom;

(d) and (e) remain the same.

(f) an adequate closet or wardrobe, lighting sufficient for reading and other resident activities, bureau or dresser or equivalent, and at least 4 one chair with arms in each bedroom for every 2 two residents;

(g) remains the same.

(h) a licensee shall provider must provide washable bedding for each bed, which includes 2 two sheets, a pillow case, minimum of 4 one blanket, and a bedspread; and

~~(i) bed linen shall be changed at least weekly or more often if soiled;~~

~~(j)~~ (i) ~~a licensee shall~~ provider must have a linen supply for twice the number of beds in the home.

~~(8) (12) Living rooms.~~ ~~A foster home shall~~ An AFCH must provide distinct living and sleeping areas. All areas shall must be well lighted, heated, and ventilated.

(a) The home shall must have a living or day room area for use by a resident and his visitors.

(b) The living and sleeping areas for a ~~given~~ resident shall must not be in separate wings, units, or buildings.

(c) A living room, dining room, or other room not ordinarily used for sleeping shall must not be used for sleeping by residents, ~~or foster family members~~ providers, or other persons living in the home.

~~(9) (13) Bathrooms.~~ One toilet, sink, and bath or shower shall must be provided for each six adults individuals in the ~~foster home~~ AFCH, ~~including the foster family and the residents.~~ At least one toilet and sink shall must be available on each floor where residents' bedrooms are located.

~~(a) All bathrooms used by residents shall have the following:~~

~~(i) a toilet and sink;~~

~~(ii) a tub or shower equipped with non-skid mats or material and permanent sturdy hand grips;~~

~~(iii) an individual towel rack and place for resident's toilet articles; and~~

~~(iv) (a) all light switches must be located by the door in all bathrooms.~~

(b) Bathrooms shall must be vented to outside or have an outside window.

(c) Every bathroom door must be designed to permit the opening of the locked door from the outside in an emergency.

(d) Bathtubs and showers must be equipped with a nonskid surface and sturdy grips.

(e) The use of a commode/movable toilet must only be temporary, less than 30 days, and be accompanied by the resident's practitioner's order. Commodes/movable toilets must be emptied frequently and cleaned and sanitized daily, or more often if necessary.

~~(10) (14) Kitchen.~~ The kitchen shall must be equipped properly to prepare and serve adequate meals.

(a) Waste shall must be kept in leakproof, nonabsorbent containers with close fitting covers for garbage, refuse, and other solid waste.

(b) Waste shall must be removed from the kitchen daily and from the premises at least weekly.

~~(b) (c)~~ Poisonous compounds, caustics, and other dangerous material shall must not be kept in the food preparation area.

~~(c) (d)~~ The kitchen shall must be maintained in a clean and sanitary condition.

~~(11) (15) Heating.~~ ~~The home shall~~ AFCH must be heated by centralized heating or its equivalent. ~~All rooms used by residents shall be kept at a~~ Temperature of all rooms must be between range of 68° F through 72° F during non-sleeping hours 76° F in the daytime and 60° F through 76° F during sleeping hours.

(a) If the heating mechanism is located in the basement of the home, the separation ~~shall~~ must include at least a 1 3/4 inch solid wood core door or equivalent to create a floor separation between the basement and the first floor.

(b) Flame producing water heaters ~~or incinerators shall~~ must be installed with the same protection as the heating mechanism.

(c) The use of space heaters in an ~~foster home~~ AFCH is prohibited.

(d) remains the same.

(e) In existing homes where an American ~~g~~Gas ~~a~~Association (AGA) approved sealed combustion wall heater has been installed in accordance with both the AGA and the manufacturer's recommendations, approval will be given if the unit is located on an outside wall, obtains combustion air directly from the outside, and vents products of combustion directly to the outside.

(f) ~~All wood burning stoves must be properly installed and inspected by the local fire inspector or a state fire marshal. The use of wood burning stoves or fireplaces is prohibited unless documentation is available showing that proper installation and inspection have taken place by a qualified inspector.~~

(i) Documentation will be required upon initial licensure or initial installation and annually, thereafter.

(ii) Documentation must be kept for three years and be available for inspection.

(g) Storage of combustible materials is prohibited in ~~rooms~~ areas containing the heating mechanism, water heater, or incinerator.

(h) The heating mechanism ~~shall~~ must be inspected by the ~~licensee~~ provider at least yearly and necessary maintenance and repairs made.

(i) At least one carbon monoxide detector is required on each level of the AFCH.

~~(12) With respect to any conditions in existence prior to April 5, 1996, any requirement of ARM 37.100.140 may be waived at the discretion of the department if:~~

~~(a) physical limitations of the adult foster care home would require disproportionate expense or effort to comply with a requirement, with little or no increase in the level of safety to the residents and staff; or~~

~~(b) compliance with a requirement would involve unreasonable hardship or unnecessary inconvenience, with little or no increase in the level of safety to the residents and staff.~~

~~(13) With respect to any conditions in existence prior to April 5, 1996, the specific requirements of ARM 37.100.140 may be modified by the department to allow alternative arrangements that will provide the same level of safety to the residents and staff, but in no case shall the modification afford less safety than that which, in the discretion of the department, would be provided by compliance with the corresponding requirement in ARM 37.100.140.~~

AUTH: 50-5-103, 50-5-215, ~~53-5-304~~, MCA

IMP: 50-5-103, 50-5-204, 50-5-215, ~~53-5-303~~, MCA

37.100.141 ADULT FOSTER CARE HOMES; (AFCH): FIRE SAFETY (1) A smoke detector approved by a recognized testing laboratory, which is properly

maintained and regularly tested, shall must be located on each level of the ~~foster~~ home AFCH and in all sleeping areas and common living areas with the exception of the kitchen and bathrooms. ~~Mobile homes shall have smoke detectors near all sleeping areas.~~

(2) If individual battery-operated smoke detectors are used, the following maintenance is required:

(a) smoke detectors must be tested at least once a month to ensure that they are operating correctly;

(b) new operating batteries must be installed at least once each calendar year; and

(c) documentation demonstrating required maintenance must be kept on-site for a period of 24 months.

~~(2)~~ (3) A workable portable fire extinguisher, with a minimum rating of 2A10BC, must be located on each floor of the home with a minimum rating of 2A10BC is required. Fire extinguishers shall must be readily accessible at all times.;

(a) mounted on the wall not to exceed five feet from handle to floor and no closer than four feet from the floor;

(b) no more than 75 feet from each other;

(c) inspected, recharged, and tagged at least once a year by a person certified by the state to perform such services; and

(d) not obstructed or obscured from view.

(3) remains the same, but is renumbered (4).

~~(4)~~ (5) No stove or combustion heater will be so located as to block escape or be located under a stairway in case of malfunctioning of the stove or heater.

~~(5)~~ (6) Exits. Exits are defined as a means of egress or passage to safe ground outside a building.

(a) Every room used for sleeping, living, or dining shall must have at least two exits that are remote from one another, at least one of which shall must be a door or stairway providing a means of unobstructed travel to the street or ground level outside of the building. Of these two exits, one may be an egress window which meets the criteria in (6)(c)(i) through (iv).

(b) All exits shall must be maintained in unobstructed, easily traveled condition at all times, free of ice and snow on the outside.

(c) ~~Where basements are regularly~~ Every floor of the AFCH that is utilized for resident activities, there shall be will have two remote exits. Of these two exits, one may be a window which meets the following criteria found in the National Fire Protection Association Unified Facilities Criteria (NFPA UFC) 101 or Section 1025 International Building Code (IBC) (2006):

(i) emergency escape and rescue openings must be a minimum net clear opening of 5.7 square feet;

(ii) minimum net clear opening of not less than 24 inches in height and 20 inches in width;

(iii) window openings must not be greater than 44 inches from the floor; and

(iv) window openings must be operational from the inside without use of keys or tools.

(d) Stairways in a basement may only be used as an exit if they provide a means of unobstructed travel to the outside of the building.



~~(d)~~ (e) Doors which form a part of a required exit shall must be at least 36 inches in width in new construction, and at least 30 inches in width in existing facilities, and in all cases, exit doors must insure be of adequate width for residents requiring wheelchairs.

~~(e)~~ (f) Traffic to and from any room shall must not be through a resident's bedroom.

~~(f)~~ (g) The first floor of an ~~foster home shall~~ AFCH must have at least two separate and independent exits leading to the outside.

~~(g)~~ (h) Homes accommodating residents who regularly require wheelchairs, shall must be equipped with ramps located at each exit to the outside. A ramp shall must not exceed 1 foot of rise in 12 feet of run.

~~(h)~~ (i) ~~No~~ The required path of travel to the outside shall must not be through rooms that are subject to locking or otherwise controlled by a person other than the person seeking to escape.

~~(6)~~ (7) ~~No Access to rooms that are occupied room by residents shall have as its must not be by~~ means of access a trap door, ladder, or folding stairs.

~~(7)~~ (8) Every door that can be locked shall must have a means to open the door from the outside in case of emergencies. Locks on closet doors shall must be openable from both sides.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

37.100.145 ADULT FOSTER CARE HOMES; (AFCH): OTHER SAFETY REQUIREMENTS (1) Rugs shall must be attached to the floor or made of non-skid nonskid material. ~~Unattached throw rugs and scatter rugs are prohibited.~~

(2) Corridors shall must be well lighted, uncluttered, and at least ~~3~~ three feet wide.

(3) Stairways and ramps shall must have sturdy banisters. ~~Open stairways should be protected by gates, if aged persons are being cared for. Stairs shall be provided with non-slip tread and shall be at least 3 feet wide.~~

(a) Open stairways should be protected by gates unless gates do not enhance the safety of the residents.

(b) Stairs and ramps must be provided with nonslip tread and will be at least three feet wide.

~~(4) Every bathroom door shall be designed to permit the opening of the locked door from the outside in an emergency.~~

~~(5) Bathtubs and showers shall be equipped with non-skid mat and sturdy grips.~~

~~(6)~~ (4) A provider or staff person must have either visual or auditory contact, at least every 30 seconds, with any resident who is able to bathe unassisted but has a condition which may render them physically ~~and/or~~ mentally helpless, or both.

(5) Extension cords may not be used as permanent wiring.

(6) All appliances, lamp cords, and exposed light sockets must be suitably protected to prevent accidents or electrocution.

(7) All areas occupied by residents shall must be well lighted. Night lights shall must be provided for each resident. Light switches shall must be located at the

~~door and switches in bathroom shall be located at least 4 feet from tub or shower. Exposed light bulbs shall not be used in the home.~~

(8) The yard area ~~shall~~ must be kept free from all hazards, nuisances, refuse, and litter.

(9) All guns must be kept in locked storage and ammunition must be kept in locked storage separate from the gun.

(10) The provider must ensure the residence is equipped with accessible first-aid supplies including a first-aid kit with sufficient supplies available at all times. A first-aid kit must:

(a) be readily available on-site as well as in all vehicles used by the AFCH;

(b) meet the standards of an appropriate national organization for the activity being conducted and the location and environment being used;

(c) be reviewed with new staff for contents and use; and

(d) be inventoried on a quarterly basis and restocked as needed.

(11) Policies and procedures must be in place for the safe use and storage of fuels and all heat sources.

(a) All alcohol, detergents, chemical sanitizers, and related cleaning compounds and other chemicals must be stored in their original properly labeled container in a safe location.

(b) Combustible and flammable materials and liquids must be properly stored in their original properly labeled container so as not to create a fire hazard.

(c) Poisonous compounds such as insecticides, rodenticide, and other chemicals bearing the EPA toxicity labels "warning" or "danger" must be kept in their original properly labeled container and under lock and key.

(d) Poisonous or toxic chemicals may not be stored above or adjacent to food, dishes, utensils, or food-contact surfaces. They may not be used in such a manner that they could contaminate these articles.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

37.100.146 ADULT FOSTER CARE HOMES, (AFCH): EMERGENCY PREPAREDNESS ~~(1) The adult foster home shall~~ Each AFCH must have written policy and procedures for emergency evacuation to be followed in the case of fire or other emergency. A provider and resident evacuation drill must be conducted at least two times annually, no closer than four months apart.

(a) All household members must participate in an evacuation drill.

(b) The provider will retain a written report including, but not limited to the date and time of the drill and those involved in the drill. The provider must retain a copy of the written report, on-site, for a period of 24 months.

~~(2) Residents, adult members of the foster family and other persons in the home shall be familiar with emergency procedures and such procedures shall be practiced with the residents at least quarterly. A new resident will be instructed in emergency evacuation upon admission.~~

(3) Emergency procedures shall must include a plan for removing all residents, including residents who need assistance in exiting.

(4) New staff members must also be oriented in how to conduct an evacuation within one week of employment and before being scheduled as the only staff in the home. Documentation of this orientation must be maintained in the staff member's personnel record.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

37.100.150 ADULT FOSTER CARE HOMES, (AFCH): PROGRAM (1) The licensee shall provider must provide light personal care, custodial care, and supervision for residents, including:

(a) ~~a~~ A minimum of three regular, nutritious, attractively prepared and well-balanced meals per day must be served family style per day and a minimum of two snacks offered to residents per day;

(i) ~~(b)~~ Not more than 15 hours shall can elapse between the evening and morning meal.

(ii) ~~(c)~~ All perishable foods shall must be stored at such temperatures as will protect against spoilage. Temperatures must not register over 41° F for refrigeration and 0° to 10° F in the freezer.

(d) Thermometers must be kept in freezer and refrigerator compartments.

(iii) ~~(e)~~ All foods, while being stored, prepared, or served shall must be protected against contamination and be kept safe for human consumption.

(iv) ~~(f)~~ Home canned foods ~~cannot~~ must not be used for resident's meals.

(v) ~~(g)~~ The licensee shall provider must prepare meals which comply with the special dietary needs of the resident ~~who has been placed on a special diet~~ as prescribed by his physician the resident's practitioner.

~~(b) opportunities for residents to participate in community organizations and activities.~~

~~(2) The licensee shall cooperate with the placing agency to implement the resident's case plan.~~

~~(3) The licensee shall allow each resident the opportunity to voluntarily practice his or her own religion. Residents shall be permitted by the licensee to attend religious services of the resident's choice in the community and to visit with representatives of their faith.~~

~~(4) The licensee shall allow each resident the opportunity to identify with his cultural heritage.~~

~~(5) The licensee shall allow for the privacy for the resident. The licensee shall provide appropriate sleeping arrangements, separate storage space for clothing and personal articles, and a place to display pictures, belongings and other personal items.~~

~~(6) The resident shall be provided the opportunity for bathing and personal grooming as desired.~~

~~(7)~~ (2) If a resident requires assistance in bathing, the person assisting should be of the same sex whenever possible. If not possible, appropriate covering shall must be used to assure ensure the resident's privacy.

~~(8) The resident shall be allowed to dress as fashion, personal tastes, cleanliness and the season warrants.~~

~~(9) (3) An A provider, staff member, or adult member of the foster family or another adult employee of the licensee shall AFCH must always be present when a resident is in the home except as may be provided in a resident's individual assessment plan. Only if stated in the resident's case plan or resident's agreement can a resident be left in the home alone. This time must be no longer than four hours in a 24-hour period.~~

~~(10) The licensee shall not subject the resident to moral, social and financial exploitation.~~

~~(11) (4) Residents shall must not be used as employees of the foster home AFCH or be coerced into performing tasks such as housekeeping, laundering, and yard work for the operator provider or others.~~

~~(12) A resident shall have access to the use of the United States mails, and may write and send mail at his own expense without censorship and receive mail addressed to him unopened.~~

~~(13) A resident shall have daily, private access and use of a telephone for local calls. Similar access is to be granted for long distance calls which are made collect or for which charges are otherwise paid by the resident.~~

~~(14) Restrictive visiting hours shall not be maintained and residents shall be allowed to receive reasonable numbers of visitors at any reasonable time.~~

~~(15) An elderly or disabled adult shall not be denied admission to, or be discharged from, a foster home because of race, religion, color or national origin.~~

(5) The provider will transport residents to medical, dental, mental health, and other appointments related to the resident's care plan, unless the resident, case manager, or guardian has arranged for other transportation.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

### 37.100.151 ADULT FOSTER CARE HOMES, (AFCH): MEDICATION

(1) All residents must take self-administer their own medications.

(2) The licensee shall, as necessary, be provider is responsible for providing assistance to the resident in taking his medications, including, but not limited to:

(a) reminding the resident to take medications removing medication from secured storage;

(b) assisting with the removal of a cap providing verbal suggestions, prompting, reminding, gesturing, or providing a written guide for self-administering medications;

(c) assisting with the removal of a medication from a container for residents with a disability which prevents performance of this act; or handling a prefilled, labeled medication holder, labeled unit dose container, syringe or original marked, labeled container from the pharmacy, or a medication organizer;

(d) observing the resident take the medication. opening the lid of the container for the resident;

(e) guiding the hand of the resident to self-administer the medication;

(f) holding and assisting the resident in drinking the fluid to assist in the swallowing of oral medications; and

(g) assisting with removal of a medication from a container for residents with a physical disability which prevents independence in the act.

~~(3) If the licensee must assist the resident in taking medicine in any way, the licensee shall assure that a medication record is kept noting the doses taken and not taken.~~ Resident medication organizers may be prepared up to four weeks in advance and injectable medications as specified in (4)(c) by the following individuals:

(a) a resident or a resident's legal representative;

(b) a resident's family caregiver, who is a person related to the resident by blood or marriage or who has full guardianship; or

(c) as otherwise provided by law.

(4) The individual referred to in (3) must adhere to the following protocol:

(a) verify that all medications to be set up carry a practitioner's current order;

(b) set up medications only from prescriptions in labeled containers dispensed by a registered pharmacist or from over-the-counter drug containers with intact, clearly readable labels; and

(c) set up injectable insulin up to seven days in advance by drawing insulin into syringes identified for content, date, and resident. Other injectable medications must be set up according to the recommendations provided by the pharmacy.

(5) An accurate medication record for each resident must be kept of all medications, including over-the-counter medications, for those residents who require monitoring or assistance or both by the provider. The record must include:

(a) name of medication, reason for use, dosage, route, and date and time taken;

(b) name and telephone number of the prescribing practitioner;

(c) any adverse reaction, unexpected effects of medication, or medication error, which must also be reported to the resident's practitioner;

(d) allergies and sensitivities, if any; and

(e) resident specific parameters and instructions for PRN medications.

~~(4) (6)~~ The medication record shall must indicate the reason for the omission of any dose of medication.

(7) A medication record need not be kept for those residents for whom written authorization has been given by their practitioner to keep their medication, including over-the-counter medication, in their rooms and to be fully responsible for taking the medication in the correct dosage and at the proper time. The authorization must be renewed on an annual basis.

~~(5) (8)~~ Prescription drugs shall must be purchased from a licensed pharmacy, labeled with the name, address, and telephone number of the pharmacy, name of the resident, name and strength of the drug, direction for use, date filled, prescription number, and name of physician the practitioner, and expiration date. Controlled substances shall must have a warning label on the bottle.

~~(6) (9)~~ There shall be a locked storage space provided for resident's medication. All prescription and nonprescription medication must be contained in a locked storage area.

~~(7)~~ All medication shall be left in the container in which it was provided to the resident by the pharmacist or physician.

(10) Medications requiring refrigeration must be separated from food in a clearly labeled, designated locked container.

~~(8)~~ (11) If the resident is not able to do so, the ~~licensee shall~~ provider must destroy all discontinued prescriptions.

(a) The provider will maintain a record of all destroyed or returned medications in the resident record.

(b) Documentation of disposition including resident's name, name of drug, quantity, and prescription number shall must be signed by the licensee individual disposing of the medication. This documentation shall be filed in the resident's record.

~~(9) Over-the-counter drugs shall be locked up and made available only to the resident who purchased them.~~

(12) No resident, provider, or staff member may be permitted to use another resident's medication.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, 53-5-304, MCA

37.100.152 ADULT FOSTER CARE HOMES, (AFCH): ILLNESSES, ACCIDENTS, SERIOUS INCIDENTS, ABSENCES, OR DEATH (1) In case of an accident or sudden illness, the ~~licensee shall~~ provider must immediately obtain needed care ~~immediately for the resident~~ and notify the ~~relative, other person or agency responsible for placing and maintaining the resident in the foster home~~ resident's legal representative within 24 hours.

~~(2) Accidents or incidents resulting in injury to resident which required medical attention shall~~ Any serious incident must be reported to the department's quality assurance licensing surveyor and the resident's legal representative within 72 24 hours or the next business day following the incident. ~~An accident record or incident report shall be prepared for any accident involving a resident, foster family member or visitor. Incident includes seizures or highly unusual behavior episodes. An accident record or incident report shall include the following information:~~

(3) The incident report must be in writing and include the following information:

(a) name of ~~the person~~ resident involved in ~~accident or~~ the incident;

(b) date, hour, place, and cause of ~~accident or~~ the incident;

(c) description of the ~~accident or~~ incident;

(d) effect of ~~accident or~~ the incident on ~~the person~~ resident involved and type of care given;

(e) name of ~~physician~~ practitioner notified and time of notification, if necessary;

(f) ~~physician's~~ practitioner's statement regarding extent of injuries, treatment ordered, and disposition of ~~person~~ resident involved;

(g) time and date guardian notified;

(h) time and date of notification of case manager, if the resident has a case manager; and

(g) remains the same, but is renumbered (i).

(4) As required by 52-3-811, MCA, any person who operates or is employed by an AFCH must report any suspected abuse, neglect, or exploitation of a resident to adult protective services.

~~(3) (5) If a resident is absent from the home without explanation for a period of 4 hours or more, the foster parents shall notify the local law enforcement authorities, the licensing social worker, the relatives or legal guardian and the person or agency responsible for placing and maintaining the resident in the adult foster home.~~ If a resident is unexpectedly absent from the home without explanation for a period of four hours or more, the provider must notify local law enforcement, case managers, and relatives or legal representatives of the resident.

~~(4) (6) When a resident dies, the licensee shall immediately notify the resident's physician, the next of kin or legal guardian, the licensing social worker and the person or agency responsible for placing and maintaining the resident in the adult foster home.~~ When a resident dies, the provider must immediately notify the resident's practitioner and the resident's legal representative.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

37.100.153 ADULT FOSTER CARE HOMES; (AFCH): RECORDS (1) The licensee shall provider must submit to the department, upon its request, any reports required by federal or state law or regulation.

~~(2) A licensee shall report a change of address to the department at least 3 weeks prior to moving, and the department shall evaluate whether the new residence meets the licensing requirements before the licensee may operate an adult foster home in the new residence.~~

~~(3) As required by the Elder Abuse Prevention Act, 53-5-511(3)(e), MCA, any person who operates or is employed by an adult foster home shall report any abuse, neglect or exploitation of a resident to the department or its local affiliate.~~

~~(4) (2)~~ The licensee shall provider must maintain a record regarding each resident in the home which shall contain at least the following information:

(a) name, address, and telephone number of next of kin or legal guardian;

(b) name, address, and telephone number of person or agency responsible for placing the resident in the home and a copy of the placement resident agreement;

(c) remains the same.

(d) the name and address of the ~~preferred physician~~ resident's practitioner and hospital;

(e) any ~~accident reports or other~~ incident reports regarding the resident;

(f) any grievance or complaints lodged by the resident;

(g) an individual record of prescribed medication taken or not taken medication records as described in ARM 37.100.151;

(h) a signed medical authorization form by the resident or resident's legal representative allowing the provider to obtain needed medical information regarding the resident;

(h) (i) all resident records shall be updated at least quarterly. documentation of medical appointments or consultations and results;

(j) a signed copy of the resident rights statement as required in [New Rule II];  
and

(k) a copy of the resident's treatment plan or case plan, if placed through the Mental Health Foster Care Program or the department's Developmental Services Division.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-204, 50-5-215, 53-5-303, MCA

37.100.157 ADULT FOSTER CARE HOMES; (AFCH): THIRD PARTY PROVIDERS (1) It is recognized that residents may require temporary in-home services from third party providers. The following third party services are allowed in ~~adult foster care homes~~ an AFCH:

(a) If the ~~home operator~~ provider who is the only service provider in the home becomes temporarily incapacitated (~~2 for two~~ weeks or less), a home attendant, personal care attendant, or other qualified person may come into the home to provide the needed services.

(b) If a resident's ~~physician~~ practitioner prescribes temporary (~~less than 30 days~~) in-home skilled nursing services for less than 30 days to prevent the resident's hospital confinement, skilled nursing services may be provided in the ~~adult foster home~~ AFCH for a period not to exceed 30 days.

(c) If a current resident requires hospice services, such services may be provided in the ~~adult foster home~~ AFCH for an indefinite period.

(2) The third party in-home skilled nursing services ~~or hospice services shall as outlined in (b) must~~ not exceed 2 two hours per day per resident.

(3) The day and hour limits established in this ~~section~~ rule are not limitations on the availability of services from any state or federally funded in-home service programs, but are established to ~~insure that adult foster care homes~~ AFCHs provide light personal care and custodial services, not skilled nursing services.

(4) Payment from third party in-home services is the responsibility of the resident.

(5) Documentation of the services provided to the resident must be retained in the resident record.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, 53-5-304, MCA

37.100.161 ADULT FOSTER CARE HOMES; (AFCH): RESIDENT'S FUNDS (1) ~~A resident~~ Residents shall must have access to and use of ~~his or her~~ their personal funds. Exceptions ~~shall be~~ are subject to provisions of the resident's ~~assessment~~ case plan.

(2) A ~~licensee~~ provider may handle a resident's finances only if no other responsible person is available and willing to do so.

(a) The maximum value of money and ~~valuables~~ a licensee shall accept accepted by the provider for safekeeping ~~shall must~~ not exceed \$100.00 per resident.



(b) ~~A Resident's funds shall~~ must be kept separate and apart from all funds and monies of the ~~licensee provider~~ and treated as a trust obligation of the ~~licensee provider~~.

(3) The ~~foster parent provider~~ is responsible for maintaining a written record of each resident's personal property and personal financial transactions, except for those residents who are capable of handling their own financial affairs or those residents whose financial affairs are handled by a relative, guardian, or conservator.

(4) ~~The licensee shall keep a~~ A current monthly record of the income, and source of income, and expenses for each resident, except those residents who are capable of handling their own financial affairs, must be maintained by the AFCH provider.

(a) ~~The licensee shall provider must~~ ensure that the resident's personal money and personal property is not appropriated or misused by any person. Any unethical use of a resident's money or property by another ~~shall~~ must be reported to ~~the department or its local affiliate~~ adult protective services pursuant to ~~53-5-514 52-3-811~~, MCA.

(5) Transactions prohibited:

(a) ~~A member or employee of a foster family shall~~ provider, staff, or any person living in the home must not borrow money, property, or other valuables from a resident.

(b) ~~Sales or other financial transactions between a resident and a member or employee of the foster family~~ provider, staff, or any person living in the home are prohibited.

AUTH: ~~50-5-103, 50-5-215, 53-5-304~~, MCA

IMP: ~~50-5-103, 50-5-215, 53-5-303~~, MCA

37.100.162 ADULT FOSTER CARE HOMES, (AFCH): PLACEMENT RESIDENT AGREEMENT (1) ~~The licensee shall provider must~~ enter into a written placement agreement with the ~~agency or person placing the elderly or disabled adult in the home~~ prospective resident or the resident's legal representative prior to admission to the home. The provider must give the prospective resident or the resident's legal representative a copy of the agreement and must explain the agreement in full. The agreement must include at least the following items:

(a) ~~The agreement shall specify the responsibilities of the licensee and the placing agency or person requesting care. a statement explaining light custodial care provided to the resident, as well as the limitations of an AFCH;~~

(b) a statement describing specific services the AFCH will provide;

(c) a statement describing transportation of the resident to and from medical appointments and activities;

(d) a statement explaining the resident's responsibilities including, but not limited to house rules, the grievance policy, and policy regarding pets;

(b) (e) The agreement shall set forth the a statement explaining specific charges that will be made to the resident for care and an itemized statement of what expenses in addition to the cost for care will be charged to the resident including fines, penalties, or late fees that will be assessed against the resident-;

(f) a statement that the agreed-upon provider rate will not be changed unless 30 days advance written notice is given to the resident or resident's legal representative, or both;

(g) criteria for requiring transfer or discharge of the resident;

(h) the provider's policy for refunding payment in the event of the resident's absence, discharge, or transfer from the AFCH and the provider's policy for refunding security deposits; and

(i) signature of AFCH provider, resident, and legal representative.

~~(e) (2) A copy of the agreement shall must be filed in the resident's file.~~

~~(d) For those residents placed in the home by the department, a copy of the agreement shall be sent to the department within 3 days from the day the adult begins to reside in the home.~~

~~(e) As part of the written agreement for residents not placed by the department, the licensee will state the policy for refunding the resident's payments.~~

~~(2) The prospective resident or his guardian shall be allowed to participate in the selection of a foster home.~~

(3) When there are changes in services, financial arrangements, or requirements governing the resident's conduct and care, a new resident agreement must be executed or the original agreement must be updated by addendum. New agreements and any addenda must be signed and dated by the provider, the resident, and the resident's legal representative.

(3) (4) If there is a question as to whether the aged or disabled adult can be adequately cared for in foster care an AFCH, the licensee or placing agency shall provider must contact the adult's personal physician resident's practitioner for an evaluation and written recommendation stating that placement in the AFCH is the most appropriate level of care for the resident and that the resident meets the criteria set in [New Rule I].

~~(4) The licensee shall not discharge or transfer a resident from the home without prior planning, including but not limited to:~~

~~(a) determining that the move is in the resident's best interest;~~

~~(b) maintaining a record that includes date of discharge, the reason for discharge, the disposition of money and valuables held for safekeeping and a forwarding address of the resident or a relative, guardian or other adult;~~

~~(c) providing 10 days prior notice to the placing agency or person responsible for placing the resident.~~

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

37.100.165 ADULT FOSTER CARE HOMES; (AFCH): FOSTER PARENTS GENERAL REQUIREMENTS FOR PROVIDERS AND STAFF (1) Providers and staff must be at least 18 years of age or older.

(1) (2) Foster parents, employees and other members of the household Providers and staff must be in good physical and mental health. To assist the department in evaluating the mental and physical health of applicants, foster parents, employees and members of the foster home household, the applicant or licensee shall cooperate with the department in providing the following information:

~~(a) (3) A-CSD-SS-33, An applicant, provider, staff, and each adult living in the AFCH must complete a "personal statement of health for licensure" form provided by the department must be completed for each person living in the household or employed by the licensee and submitted to the department with the initial application for licensure and annually thereafter. Forms must be submitted to the department with the initial application for licensure or application for license renewal.~~

~~(b) The applicant for licensure or relicensure shall complete the application form provided by the department, which shall include questions regarding whether the applicant or other member living in the household has received inpatient or outpatient treatment for mental illness, drug or alcohol abuse.~~

~~(c) Any applicant, any licensed foster parent or any member of the foster home household or employed by the licensee may be asked to obtain a psychological evaluation or medical examination by the department.~~

~~(d) Any applicant, any licensed foster parent or any member of the foster home household or person employed by the licensee may be asked to sign an authorization of release of medical or psychological records allowing the department to obtain medical records concerning the applicant, licensed foster home parent, any other member of the household or person employed by the licensee.~~

~~(e) Any applicant, licensed foster parent, member of the foster home household or staff member may be asked to sign an authorization of release of criminal record information if the department believes that the person may pose a risk or threat to the safety or welfare of any resident of the home.~~

~~(4) The department may request an evaluation of the applicant, provider, staff, or any person living in the home if there are grounds to believe they have engaged in behaviors which may place residents at risk of harm.~~

~~(5) An applicant, provider, staff, or any adult living in the home must complete a "release of information" form provided by the department to conduct a criminal, protective services, and, if applicable, a tribal criminal and protective services background check.~~

~~(6) No individual in the AFCH may pose a risk to the safety and well-being of the residents.~~

~~(7) A provider must maintain a current CPR/First-Aid Certification.~~

~~(a) Staff must obtain a current CPR/First-Aid Certification within 30 days of hire. Certification must be kept current.~~

~~(2) (8) An foster family AFCH must include at least one adult who lives in the home on a permanent basis and who is not engaged in employment outside the home. Exceptions may be granted by the department if there is adequate provision for alternative care.~~

~~(3) (9) The foster parent, employees and other members of the household shall provider and staff must:~~

~~(a) accept agency supervision;~~

~~(b) (a) share information about the residents with the department and the agency or persons responsible for placing and maintaining the resident in the home resident's legal representation; and~~

(c) ~~(b)~~ cooperate with any resident's ~~physician~~ practitioner in assisting the resident in following the ~~physician's~~ practitioner's recommendations ~~to for~~ the resident.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

37.100.170 ADULT FOSTER CARE HOMES, (AFCH): COMPLAINTS GRIEVANCES (1) ~~The licensee shall~~ provider must have a written grievance policy which outlines the procedures to be followed by a resident in presenting a grievance to the family concerning his care in the home.

(2) A resident's ~~grievances and complaint record shall~~ written grievance report must be maintained ~~which shall include copies of all residents' grievances or complaints filed in chronological order in the resident's record.~~

(3) The report ~~shall~~ must include the nature of the complaint, the date of the complaint, and a statement indicating how the issue was resolved.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

37.100.175 ADULT FOSTER CARE HOMES, (AFCH): PROHIBITED PRACTICES (1) ~~An foster home shall~~ AFCH must not subject any resident to ~~physical~~ restraint, isolation, corporal punishment, personal humiliation, or the withholding of meals, water, clothing, mail, or visits.

(2) A licensee ~~provider, staff, or any person living in the home~~ is prohibited from providing skilled nursing care except as provided for in [New Rule I].

(3) ~~A foster home shall not provide~~ Licensed day care services provided to adults or children, ~~except that a foster home under this rule may provide day care services to children while foster care residents are present in the home for a maximum period of 3 hours per any 24-hour period, if special approval is given by the regional administrator cannot be provided in the AFCH. The regional administrator's decision on granting or denying special approval must be based on the following:~~

(a) ~~facts demonstrating the ability (or, in cases where special approval is denied, the inability) of the operator to provide for the needs of both the child day care enrollees and the foster care residents during the 3-hour period of time that this rule allows for the presence of both foster care residents and child day care enrollees;~~

(b) ~~facts bearing on whether there is beneficial social interaction between the foster care residents and the day care enrollees; and~~

(c) ~~any other relevant facts and/or circumstances bearing on the best interests of the foster care residents and the day care enrollees.~~

(4) Foster care services to children cannot be provided in the AFCH with the following exceptions:

(a) the AFCH resident lived in the home prior to the age of 18;

(b) services are provided pending adoption as defined in 41-1-103, MCA; or

(c) kinship foster care provided pursuant to 52-2-602, MCA.

(5) Smoking is prohibited in an AFCH by residents or individuals residing or visiting in the home pursuant to the Montana Indoor Clean Air Act, 50-40-104, MCA.

AUTH: 50-5-103, 50-5-215, ~~53-5-304~~, MCA

IMP: 50-5-103, 50-5-215, 50-5-216, ~~53-5-303~~, MCA

5. The department proposes to repeal the following rules:

37.100.105 PROCEDURES FOR OBTAINING SERVICES is found on page 37-24446 of the Administrative Rules of Montana.

AUTH: 53-5-304, MCA

IMP: 53-5-303, MCA

37.100.110 GENERAL is found on page 37-24451 of the Administrative Rules of Montana.

AUTH: 53-5-304, MCA

IMP: 53-5-303, MCA

## 6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing New Rules I through IX, amendments to ARM 37.100.101, 37.100.102, 37.100.120, 37.100.121, 37.100.125, 37.100.130, 37.100.135, 37.100.140, 37.100.141, 37.100.145, 37.100.146, 37.100.150, 37.100.151, 37.100.152, 37.100.153, 37.100.157, 37.100.161, 37.100.162, 37.100.165, 37.100.170, and 37.100.175, and the repeal of ARM 37.100.105 and 37.100.110. This entire subchapter must be updated to reflect current practice as well as to coincide with revised language in current statutes. Proposed changes in this subchapter also incorporate updates with respect to 50-5-216, MCA. Additional changes have been made with respect to placing individuals in adult foster care. The department no longer has the authority to place individuals as the result of repealed statutes 52-3-301 and 52-3-314, MCA; therefore the reference was stricken.

As part of a periodic review, the department is amending its rules to eliminate outdated and unnecessary provisions, to specify language as a result of definitional changes, and to align terminology with language currently used within the industry. Examples would include changing "physician" to "practitioner," "licensing study" to "licensing survey," and "adult foster family care" to "adult foster care home (AFHC)," among others.

The proposed amendments are necessary to implement better organization, proper rule numbering, and to correct grammatical and spelling errors. Punctuation is amended to comply with administrative rule formatting requirements.

### New Rule I

The department proposes New Rule I that incorporates 50-5-216, MCA and provides an exception to ARM 37.100.175(1) which prohibits the placement of residents who need "skilled nursing care." Some individuals with severe disabilities have resided in a "foster home environment" for a significant period of time; 50-5-216, MCA allows those youth to continue in their current foster care placement after reaching the age of 18 in spite of the severe disability which may require skilled nursing care. Providers continue to question the inconsistency of level of care. By providing the reference to 50-5-216, MCA, we are identifying the criteria for the exception.

#### New Rule II

Resident right's provisions are currently outlined in ARM 37.100.150. New Rule II is being proposed in order to separate rules that are not related in content. This section is being proposed to reflect current universal resident's rights practices for elderly or disabled individuals and to mirror the Montana Long-Term Care Residents Bill of Rights. By including the written and signed acknowledgement of resident's rights, providers are ensuring that residents are aware of these rights.

#### New Rule III

New Rule III is being proposed because it is necessary to inform providers of the restrictions and parameters on the issued license. This proposed new rule identifies the protocol that providers need to follow up on closure of the facility in accordance with 50-5-201, MCA.

#### New Rule IV

The department is proposing New Rule IV to ensure that AFCHs have proper protocols for infection control and preventing of the spread of communicable diseases.

#### New Rule V

AFCHs are intended to create a family-like setting and are frequently established in single-family dwellings. At times, the provider may be a pet owner or the residents may wish to bring their own pet to the facility. Animals, including pets, can be a source of illness for people. Hand washing is the most important way to reduce the spread of infection. New Rule V is necessary to establish criteria to ensure that pets will be free and clear of health hazards and not present a danger to visitors, or to those who reside or work in the AFCH.

#### New Rule VI

The department currently requires criminal and protective services background checks to be conducted. However, current rule does not outline specific crimes that would constitute disqualifying criteria for issuance of a license; nor does the rule

define crimes which would prohibit individuals from providing care in an AFCH. The department is proposing this rule to reflect federal standards regarding staff in facilities and resident's safety and well-being.

#### New Rule VII

New Rule VII applies to AFCHs who provide care for persons with mental illness. With the support and direction of a licensed mental health center or case management team, these AFCHs are increasing in number, and have a unique set of regulatory and treatment considerations that vary from the typical AFCH. With the addition of this rule, AFCH providers will develop their environment and their policies to assist these adults in working toward the most independent living possible. The skills needed for independent living can be incorporated into the resident's treatment plan and may include such things as the resident being responsible for his or her own transportation, learning domestic skills through doing chores, and so forth. While creating this setting, it is important the AFCH provider be familiar with mental illness, have training to handle emergencies, and to be an integral part of the resident's treatment planning.

#### New Rule VIII

The department is proposing New Rule VIII to specify that the terms of this subchapter apply to an AFCH when conflicts with any other licensure rules occur.

#### New Rule IX

AFCHs provide only light personal care. Often times, residents exceed that level of care and require additional services the AFCH cannot provide. The department is proposing New Rule IX to outline the discharge criteria for residents who exceed the level of care. The criteria, as proposed, is intended to provide the resident or guardian, or both, the necessary information concerning the reasons for discharge and to supply information regarding appropriate placement options. It also establishes a time frame within which to do so. In emergency situations, if determined to be a serious threat to self or others, a resident may need to be discharged without ample notice. This would be done in order to protect the health and welfare of the resident, provider, and other residents in the home.

AFCHs are subject to the Montana Long-Term Care Residents' Bill of Rights as found at 50-5-1101, MCA, et seq. Thus, the department has also proposed this new rule to be in compliance with these necessary criteria.

#### ARM 37.100.101

The department proposes to amend this rule to specify the purpose of an AFCH. The new language in (2) supports the requirements in New Rule I.

#### ARM 37.100.102

The department proposes to amend this rule to define terms used in this subchapter. New definitions have been added to provide clear understanding of terminology that has been added or revised.

ARM 37.100.120, 37.100.121, and 37.100.135

As part of a periodic review, the department is amending its rules to eliminate outdated and unnecessary provisions, specify language as a result of definitional changes, and align terminology with language currently used within the industry. The acronym AFCH has been added in place of "foster home" or "adult foster care home." The term "licensee" has been changed to "provider" to use current industry language. The term "shall" has been replaced with "must" for clarity.

ARM 37.100.125

The department proposes to amend this rule to reflect current practice in licensing procedure by changing the order of the rule. Minor changes in (3), (4), (5), and (6) are necessary to reflect changes in language to coincide with the revised language in the current statute.

ARM 37.100.130

The department is proposing to amend this rule to specify the timelines for the licensing process and to support the department's ability to deny or revoke a license in the event that the AFCH is jeopardizing the resident's health and safety by being out of compliance with New Rules I and VI.

ARM 37.100.140

The department is proposing to amend (2) through (4) to provide for continued safe environments for homes, including requirements for homes that use nonmunicipal water supply and sewage systems as well as other environmental health requirements. In consulting with the Department of Environmental Quality (DEQ), the department was advised that annual samples were not adequate in proving safety. Water quality changes throughout the year especially in the spring months and autumn months.

Section (5) adds a facility requirement for a "landline" telephone. This addition addresses questions about the appropriateness of only a cell phone available at the home. A landline phone is more reliable for emergency purposes because dropped calls from cellular phones are more likely to occur and dispatchers can trace the source of the call quickly. The notification requirement of a change in telephone number in (5) ensures necessary communication and contact with persons or agencies outside of the home.



Sections (6) and (7) are being amended to ensure the healthy and sanitary conditions in the AFCH and to reflect the current language and practices in the minimum requirements for all health-care facilities found at ARM 37.106.321.

Sections (13)(c) and (d) are being amended to ensure that the resident is safe in the bathroom and can be assisted in the bathroom in case of an emergency. Section (13)(e) is being amended to allow for the short term use and sanitary use of a commode/movable toilet. Use of a commode/movable toilet outside of the provisions of this rule could indicate that the resident exceeds the level of care available in an AFCH.

Section (14)(c) is being amended to require that dangerous materials are locked up rather than just separate from food sources. This is intended to protect residents from accidental food contamination and from the misuse of dangerous materials due to impaired judgment.

Section (15) is being amended to adjust temperatures as recommended by the health department in order to ensure the temperature in the home is appropriate and comfortable for the residents. Section (15)(f) is being amended to strengthen the requirement for documented inspections of wood burning stoves and fireplaces. Section (15)(i) is being amended to prevent hospitalization or death of residents from accidental carbon monoxide poisoning.

#### ARM 37.100.141

The department has consulted with the Department of Justice, Fire Prevention Division (State Fire Marshall's office) to ensure fire safety protection for residents of an AFCH. Fire safety requirements are being amended, including smoke detectors and fire extinguishers, to reduce the risk of serious injury or death to individuals in the home. Basements regularly utilized by residents must have an egress window in accordance with Unified Facilities Criteria (UFC) or International Building Code (IBC) regulations. Specific requirements for egress windows have been added to assist the provider in ensuring the basement is equipped with an emergency exit that meets current fire and building code standards.

#### ARM 37.100.145

An amendment is being proposed in (1) to specify the use of rugs. Rugs offer a more family-type feel to the facility. As long as the rugs are not a tripping or slipping hazard, they are acceptable in the AFCH. The stairways and ramps have been defined in more detail to be in compliance with fire safety and building codes.

Sections (5) and (6) regarding use of extension cords have been amended at the request of the State Fire Prevention Division to reduce the risk of fire hazard.

Since residents at the AFCH may have impaired judgment which could lead to the misuse, accidental or otherwise, of a firearm, (9) is being amended to reduce the risk of accidental injury or death from firearms which might be present in the home.

Section (10) is being amended to ensure that providers can respond appropriately to minor injuries.

Because of possible impaired judgment in AFCH residents which can cause the misuse of toxic or flammable materials, (11) is being amended to reduce the risk of accidental injury or poisoning from flammable or toxic materials which may be present and used in a home.

#### ARM 37.100.146

After consultation with the Department of Justice, State Fire Prevention Division, the department is proposing to amend requirements for conducting emergency evacuation drills. The requirements have been reduced from once each quarter to two times per year. This change will provide consistency with other healthcare facility rules as specified in ARM 37.106.2866(8) and (9).

#### ARM 37.100.150

After consultation with the department's Food and Consumer Safety Section, the department is proposing to amend this rule by adding temperature specifications that will protect food against spoilage.

Resident's rights have been moved to New Rule II which separates the information into its own specific rule. Thus, this information is struck from ARM 37.100.150.

Section (3) is being amended to ensure that residents receive custodial care and supervision according to their individual resident agreements or case plans, by not allowing residents to be alone for an extended period of time.

Section (5) is being amended in response to a problem that surveyors were finding in some homes where the residents had missed medical appointments due to lack of transportation. It is the intent that the AFCHs provide transportation to these appointments as providers are required to know the resident's current physical and emotional status and provide appropriate care.

#### ARM 37.100.151

The department proposes to amend this rule to define criteria for medication supervision. The criteria listed are also found in the State of Montana's Health Care Facility Rules assisted living facilities found at ARM 37.106.2805. This information is specifically found under the definition of "self-administration assistance."

It is the department's intent that residents are as independent as possible, but some circumstances necessitate assisting residents in taking their medication to prevent missed or inaccurate dosing. Documentation of assistance ensures accountability of medications handled by the provider. This coincides with the department's attempt to ensure the health and well-being of residents in this setting.

#### ARM 37.100.152

The department is proposing to amend this rule to eliminate redundancy in information and to clearly define for providers the procedure for reporting events in the home that impact residents. The incident report serves as a tool to monitor any nonroutine events. These reports are reviewed by the department to determine if the event is a serious incident as defined in these amendments to ARM 37.100.102 and if a plan of action or possible intervention is needed to prevent possible abuse, neglect, or exploitation of the resident in the home.

The requirement for reporting abuse, neglect, or exploitation has been moved from ARM 37.100.153 to this rule as it clearly points out the provider's duty by law to report those incidents.

#### ARM 37.100.153

The department is proposing to amend this rule to monitor on-going health care services provided to the resident. Documentation of services will assist provider, staff, and the resident to be aware of the resident's current health conditions and appropriate treatment. Documentation will help determine appropriateness of placement of the resident in adult foster care.

#### ARM 37.100.157

An AFCH is limited to providing light personal care and custodial care of the resident. Admission criteria determine the needs of the residents. Occasionally health concerns do arise that require care above and beyond the scope of adult foster care. This rule allows for temporary intervention to occur on behalf of the resident to prevent unnecessary placement in a more structured environment. This rule provides the parameters and limitations of third-party services in the AFCH. The department is proposing to amend this rule by adding the requirement that written documentation of third-party health care services, provided to the resident, be retained in the resident's file.

#### ARM 37.100.161

The department is proposing to update terminology of the assessment plan to case plan which is a more consistent use throughout interagency involvement. Amendments are proposed to accurately address the appropriate statutory reference for reporting exploitation. The department is also proposing to amend this rule to

extend prohibition to anyone living in the household, regardless of relationship, to prevent exploitation of the resident in the AFCH.

ARM 37.100.162

The department is proposing to amend this rule by specifying the purpose and content of the written agreement that must be signed before admission to the AFCH. The proposed amendment is necessary to define responsibilities of both parties.

The agreement is considered a contract between the resident, the resident's legal representative, and the AFCH provider. The agreement specifically identifies the costs of care to the resident, what services the AFCH will provide to the resident and admission and discharge criteria. The rule outlines the terms in which the placement agreement/contract can be modified and provides minimum criteria as to what the agreement or contract must include.

ARM 37.100.165

The department is proposing to amend this rule to clearly define provider and staff minimum requirements. This proposed amendment is necessary to provide guidelines to ensure the safety and well-being of residents cared for in the AFCH. Requiring background checks, protective service checks, and the flexibility of other assessment tools help the department determine the minimum assessment of potential of risk or harm to residents served. Requiring a release of information facilitates this process.

Currently there are no CPR/First-Aid training requirements for adult foster care providers or their staff. The department is proposing to amend this rule and include CPR/First-Aid certification to ensure that providers and staff are prepared to respond in cases of a medical emergency and ultimately ensure the well-being and safety of the residents served.

ARM 37.100.170

The resident's ability to file a grievance is part of the resident's rights. The department is proposing amending this rule to reflect a more accurate procedure. The reference to "complaint" has been changed to "grievance" to be more consistent with the language of resident rights.

ARM 37.100.175

The department is proposing amendments to define services that are prohibited in an AFCH. Current rule prohibits day care services within AFCHs; however, it allows for an exception to be granted by the regional administrator. This exception has been taken out. Young children in day care do carry with them the potential of illnesses that can spread and cause serious if not fatal infections in elderly residents, thus, placing them at high risk. Concern for staff ratio and attentiveness in an AFCH

that also provides day-care services to children compromises the supervision and care needed for the elderly. Lastly, the needs of children and elders can be conflicting and cause undue harm on either population.

This rule is being amended to comply with the requirements of 50-5-216, MCA. This rule specifies the exceptions set forth in New Rule I which indicate the circumstances when skilled nursing care is not prohibited in AFCHs.

The rule is amended to prohibit an AFCH from being dually licensed as a youth foster care for the same concern that day care poses as stated above. However, the rule does allow licensure as an AFCH for families who are fostering a child(ren) and are in the process of adopting that child(ren). The changes also allow families to provide kinship care as defined in 52-2-602, MCA to ensure the preservation of the provider's family.

The department is amending (5) by adding statutory requirements to prohibit smoking in healthcare facilities. Many concerns have arisen with the inclusion of AFCHs in nonsmoking provisions of 50-40-104, MCA. The provision is not included in the healthcare facilities statute which AFCHs operate under; therefore, providers are generally unaware of this. Providers have expressed concern regarding limiting resident's right to smoke and the provider's own right to smoke within their private residence which provides adult foster care services. The intent of the rule is to reinforce this statutory provision and to make it readily accessible to providers.

#### ARM 37.100.105 and 37.100.110

The department is repealing these rules as they are outdated. The licensure of adult foster care facilities is no longer housed in the Child and Family Services Division (CFSD) so these rules are no longer applicable. Further placement of adults into these facilities is also no longer the responsibility of CFSD.

#### Fiscal Impact

Providers will see a minor fiscal impact as a training requirement for first-aid and CPR. There is no anticipated fiscal impact to the department.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., February 13, 2014.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

12. This rulemaking proceeding was begun prior to July 1, 2013; therefore, the requirements of 2-4-111, MCA, do not apply.

/s/ Francis X. Clinch  
Francis X. Clinch  
Rule Reviewer

/s/ Richard H. Oppen  
Richard H. Oppen, Director  
Public Health and Human Services

Certified to the Secretary of State January 6, 2014.